

**RE-APPEAL BRIEF REQUEST FOR REVIEW**Docket Number (Optional)
81862P167

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Application No.
09/491,991Filed
January 26, 2000

First Named Inventor

Dean Cheng

Signature

Typed or printed
name Tu T. NguyenArt Unit
2157Examiner
Gregory G. Todd

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

NOTE: No more than five (5) pages may be provided.

I am the:

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under of 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Attorney or agent of record.
Registration Number 42,034

attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature

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Telephone Number

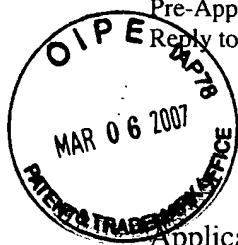
February 28, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required.

*Total of _____ forms are submitted.

Appl. No. 09/491,991
Pre-Appeal Brief Request for Review filed February 28, 2007
Reply to Final Office Action of November 15, 2006



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application. No. : 09/491,991 Confirmation No. 9322
Applicant : Dean Cheng
Filed : 01/26/2000
TC/A.U. : 2157
Examiner : Gregory G. Todd

Docket No. : 081862.P161
Customer No. : 8791

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is, on the date shown below, being transmitted by facsimile to the Patent and Trademark Office.

Tu Nguyen

February 28, 2007

Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the Final Office action dated November 15, 2006, Applicants would like to request a pre-appeal panel review of the application.

Remarks/Arguments begin on page 2 of this paper.

REMARKS/ARGUMENTS

This request is in response to the Final Office Action mailed July 21, 2006. In the Final Office Action, the Examiner rejected claims 1-68 under 35 U.S.C. §103(a). Applicants respectfully traverse the rejections and submit that the Examiner has not established a prima facie case of anticipation or obviousness.

Pre-appeal panel review of the application in light of the remarks/arguments made herein is respectfully requested.

There are several clear errors in the Examiner's rejections and arguments.

1. Claims 1-7, 10-15, 18-24, 27-32, 35-41, 44-49, 52-58, and 61-66:

Applicants would like to refer to the arguments presented in the response filed on August 30, 2006, pages 14-18. Among other things, Fukuta merely discloses returning the congestion indicator back to the source of the packet, not broadcasting to one other node.

Fukuta, therefore, specifically teaches that the congestion status is not to be broadcast to other nodes. In effect, Fukuta teaches away from the present invention. Accordingly, combining Fukuta with any other references is improper. Furthermore, Fukuta does not disclose a node in one of a single peer group and a hierarchical level. Fukuta merely discloses terminals communicating with each other via packet switches (Fukuta, col. 9, lines 11-13). Since these terminals are connected directly at the same level, they cannot correspond to a level in a hierarchical system.

Proctor merely discloses a flag signal to indicate if a mobile station may register with the base station (Proctor, col. 2, lines 65-67; col. 3, lines 1-4), not to route a call through the node. Proctor merely discloses setting a flag signal to indicate if the base station is in a congested state (Proctor, col. 2, lines 60-62). There is no measured condition at the node, including the mobile station. In addition, Proctor does not disclose a node in one of a single peer group and a hierarchical level. Proctor merely discloses a plurality of base stations communicating with a plurality of mobile stations.

2. Claims 8-9, 16-17, 25-26, 33-34, 42-43, 50-51, 59-60, and 67-68:

Applicants would like to refer to the arguments presented in the response filed on August 30, 2006, pages 18-19. Among other things, Fedyk merely discloses link state routing networks

utilizing Private Network Network Interface (PNNI) protocol, but not broadcasting a congestion status to at least one other node in the one of the single peer group and the hierarchical level.

Fedyk discloses using broadcast advertisements to notify network devices of bandwidth allocation, not a congestion status. Fedyk does not disclose determining a congestion status. Fedyk merely discloses using a link state advertisement (LSA) to synchronize the source node with other nodes (Fedyk, col. 5, lines 62-67). The LSA is not a congestion status.

Accordingly, Applicants respectfully request the Review Panel render a decision allowing the application.

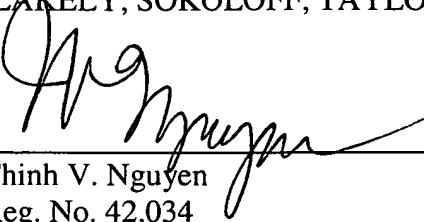
Conclusion

Applicant respectfully requests the Review Panel render a decision allowing the application.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

By


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Dated: February 28, 2007

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